

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY TODD EASTMAN,

Petitioner,

v.

WARDEN,

Respondent.

Case No. 2:24-cv-1107-TLN-JDP (P)

ORDER

Petitioner, a state prisoner, brought this action under section 2254. ECF No. 1. Then, he filed a motion seeking a stay under *Rhines v. Weber*, 544 U.S. 269 (2005), wherein he acknowledged that the petition contained only unexhausted claims. ECF No. 7. I recommended that the motion be denied, as a *Rhines* stay is unavailable where a petition contains only unexhausted claims. ECF No. 8. Those recommendations were adopted by the district judge. ECF No. 9.

Now, petitioner must indicate how he intends to proceed. A federal court cannot consider claims that have not been exhausted in state court. Before recommending dismissal based on a complete failure to exhaust, however, I will allow petitioner to file an amended habeas petition that explains the status of his claims with respect to exhaustion and why, if they remain unexhausted, this case might still proceed. He should do so within thirty days. If he fails to do so, I will recommend this action be dismissed.


1 Accordingly, it is ORDERED that:

2 1. Within thirty days petitioner shall file an amended petition in accordance with this
3 order. If he fails to do so, I will recommend that this action be dismissed.

4 2. The Clerk of Court shall send petitioner a section 2254 form habeas petition with
5 this order.

6
7 IT IS SO ORDERED.

8
9 Dated: November 7, 2024


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE